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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 CR 243 (SHS)

5 ARASH KETABCHI,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 August 30, 2017  
3:00 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13  
14 APPEARANCES

15 JOON H. KIM  
16 Acting United States Attorney for the  
Southern District of New York  
17 KIERSTEN A. FLETCHER  
Assistant United States Attorney

18 JAMES R. FROCCARO, JR.  
19 Outgoing Attorney for Defendant

20 GARY BECKER  
Incoming Attorney for Defendant

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1 THE DEPUTY CLERK: United States v. Arash Ketabchi.  
2 Counsel, please state your names for the record.

3 MS. FLETCHER: Good afternoon, your Honor. Kiersten  
4 Fletcher for the government.

5 MR. FROCCARO: Good afternoon. James Froccaro for  
6 defendant.

7 THE COURT: Good afternoon.

8 MR. BECKER: Good afternoon. Gary Becker. The Court  
9 asked me to be here. My CJA duty day was Friday. My  
10 understanding is there are conflicts with the lawyers whose  
11 duty days are today and tomorrow, so I'm happy to be here.

12 THE COURT: Good afternoon to all of you, and  
13 Mr. Ketabchi is present as well.

14 Yes, I have a letter from Mr. Froccaro, which has been  
15 filed as ECF Document 67, in which he says that Mr. Ketabchi  
16 had recently notified Mr. Froccaro that Mr. Ketabchi's  
17 financially unable to proceed with private counsel. And he's  
18 only been paid a fraction of the modest retainer he was  
19 promised, and Mr. Ketabchi has indicated he will not have the  
20 balance of the retainer. And there has been a breakdown in the  
21 attorney-client relationship, necessitating this application.

22 Mr. Froccaro, has your client filled out a CJA 23  
23 form?

24 MR. FROCCARO: He has, your Honor.

25 THE COURT: Pass it up, please.

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1 MR. FROCCARO: Mr. Becker has it, your Honor. He's  
2 going to hand it up.

3 THE COURT: Thank you.

4 Mr. Ketabchi, I have this CJA form 23. Did you fill  
5 it out, sir?

6 THE DEFENDANT: Yes, yes, your Honor.

7 THE COURT: Is that your signature?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Let me ask a few questions. It says if  
10 married, is your spouse employed, and nothing is filled out. I  
11 take it you are not married. Is that correct?

12 THE DEFENDANT: I'm not married.

13 THE COURT: Under "other income" you have 3,000  
14 employment, 2,000 Uber, and then you say "estimate." And then  
15 it says \$20,000 estimated. What does that mean?

16 THE DEFENDANT: In March, when we got the homes raided  
17 and they took all my bank statements and they closed all my  
18 bank accounts. At that time, prior to that, for the six months  
19 I estimate that may be from the business there was 20,000 or so  
20 income. And I don't have access to any of that stuff, so I'm  
21 not sure exactly what it was. And prior to that, I never filed  
22 my tax returns for this year. For -- 2016. I just -- 2017.  
23 So I don't know what my income was.

24 THE COURT: The question asked within the past 12  
25 months, so are you saying you're estimating your income total

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1 income from August of 2016 to August of 2017 is about \$20,000?

2 THE DEFENDANT: It could be more, but again, I don't  
3 have access to it, and haven't file my taxes, so I'm not  
4 positive. But in these past six months is where, you know, the  
5 important part is moving forward, I don't -- I can't get any  
6 sort of job. Everywhere I go, Google is a very dangerous  
7 device, and everybody, I work three weeks, a month, and then  
8 they come back and they tell me, hey, you know, we can't employ  
9 you anymore. Wire fraud, money laundering case. Or they do a  
10 background check.

11 Uber closed my account because of a background check.  
12 I can't even drive Uber. I was working with my father in the  
13 family business, and he can't afford to keep me anymore and  
14 some conflict of relationship stuff.

15 THE COURT: Is that the 3,000 for employment, is that  
16 when you were working for your father?

17 THE DEFENDANT: Correct. 500 a week, yup.

18 THE COURT: Uber is when you were a driver for Uber?

19 THE DEFENDANT: I was. I wish I could drive now, I  
20 wish I could get employment.

21 THE COURT: Then it says do you own any real estate,  
22 stocks, bonds, notes, or any other valuable property, and you  
23 checked yes. And what you list is a home with a value of  
24 700,000, but you also list AmeriHome as indebtedness of  
25 \$560,000.

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1 I don't want to put words in your mouth, but I gather  
2 from what you say here that you believe the value of the home  
3 you own is \$700,000, but you have a \$560,000 mortgage against  
4 the equity. Is that what this indicates?

5 THE DEFENDANT: I believe yes. If I'm -- if I wrote  
6 that by accident, may have been 650,000 I owe, not 560. I  
7 might have transposed it there. But I didn't pay last month's  
8 mortgage payment. I'm behind on last month's mortgage.

9 THE COURT: Let me ask it this way. Do you have a  
10 mortgage on your home?

11 THE DEFENDANT: I do, sir.

12 THE COURT: What is the mortgage? How much is  
13 outstanding on the mortgage?

14 THE DEFENDANT: I believe it's 650. I could call  
15 AmeriHome and ask them.

16 THE COURT: If that's your good-faith estimate, that's  
17 all right. You have to change this affidavit then, because it  
18 says 560.

19 THE DEFENDANT: Would you like me to get the exact  
20 before I do that?

21 THE COURT: I don't need it.

22 THE DEFENDANT: And your Honor, on that equity on the  
23 home, the courts have put \$100,000 cash bond on the home. And  
24 I have a \$100,020 lien on the home from a loan, a business loan  
25 I had gotten that I couldn't repay.

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1 THE COURT: Thank you. Put the correct amount, best  
2 of your ability, with the outstanding indebtedness on the  
3 mortgage.

4 MR. FROCCARO: Judge, may I hand it up?

5 THE COURT: Yes.

6 MR. FROCCARO: Thank you.

7 THE COURT: Do you have any other property, apart from  
8 the home; stocks, bonds?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Autos?

11 THE DEFENDANT: I lease a vehicle, yes, your Honor.

12 THE COURT: Mr. Ketabchi, do you swear under penalty  
13 of perjury that the statements you've set forth in this CJA  
14 financial affidavit 23 form are true and accurate?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I'm signing this. I am approving it. And  
17 is Mr. Froccaro correct in his letter to me that you no longer  
18 wish him to be your attorney?

19 THE DEFENDANT: Yes, your Honor. Not that I wish. I  
20 couldn't afford to pay the rest of the money, so he didn't want  
21 to represent me anymore without the money.

22 THE COURT: All right. I'm going to relieve  
23 Mr. Froccaro and I'm going to appoint Mr. Becker as your  
24 attorney pursuant to the Criminal Justice Act. You will not be  
25 responsible for Mr. Becker's fees or expenses. That will be

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1 paid out of Criminal Justice Act funds.

2 Mr. Froccaro, I am directing you to turn over the  
3 files to Mr. Becker and to assist in all ways in getting up to  
4 speed on this matter.

5 MR. FROCCARO: I will, your Honor. I gave him all the  
6 discovery today. If there is anything else Mr. Becker needs,  
7 I've known him for years, I'm more than happy to help.

8 THE COURT: Mr. Ketabchi, the CJA attorney on duty  
9 today and the CJA on duty tomorrow both had conflicts with  
10 regard to this case, so I've appointed Mr. Becker as the CJA on  
11 duty on Friday.

12 And Mr. Becker, I believe you know that this case has  
13 been set down for trial on April 16, and it will go to trial on  
14 that date. And I take it you're able to represent Mr. Arash  
15 Ketabchi.

16 MR. BECKER: Your Honor, I don't have any conflicts in  
17 April of 2018 or I would have raised them with your Honor's  
18 deputy. I'd like to think that between now and April '18 is  
19 sufficient time for me to be prepared to go to trial. I  
20 understand that co-counsel in this case have had about a  
21 six-month head start on me. But barring some unforeseen  
22 circumstance in terms of discovery or something, yes, I would  
23 be prepared to go to trial in April of 2018.

24 THE COURT: I'll take that as you are prepared to go  
25 to trial in April, barring some unforeseen circumstance.

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1           Is there anything else I need do? Let me sign this  
2 order that says that the request of James R. Froccaro, Junior,  
3 to be relieved as counsel is hereby ordered that James R.  
4 Froccaro, Junior's relieved, and Gary Becker is appointed  
5 pursuant to the Criminal Justice Act to assume the  
6 representation of Arash Ketabchi.

7           Government, is there anything else I can do at this  
8 point?

9           MS. FLETCHER: Nothing from the government, thank you,  
10 your Honor.

11          THE COURT: Mr. Becker, is anything at this point I  
12 can do for the defense?

13          MR. BECKER: Yes, your Honor, two matters. The first  
14 concerns the scheduling of motions in this matter. I  
15 understand the Court entered an order July 19 scheduling  
16 defense motions to be due September 18, which is of course just  
17 a little over two and a half weeks from now. And I would ask  
18 the Court, in view of the government's representation that the  
19 amount of discovery in this case is massive, that I be given at  
20 least sufficient time commensurate with the time that the other  
21 lawyers in the case were given to review the discovery and make  
22 any motions particular to Mr. Ketabchi's matter.

23          THE COURT: I can't give you the amount of time  
24 they've had from the beginning of the case, that's for sure.  
25 But I can extend the September 18 deadline by a couple of weeks



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1 if that's what you're asking.

2 MR. BECKER: No, your Honor. I was quite frankly  
3 asking if the Court would consider extending the deadline to  
4 approximately mid November. That would give me a little over  
5 two months to review the discovery.

6 Discovery was provided, I understand, to the other  
7 counsel both in June and July. The most recent discovery was  
8 July 19. So that gives those counsel a full two months, and  
9 they had discovery as early as June, which would give them a  
10 full three months.

11 I don't know how I can possibly review what I'm told  
12 by the government is just a massive amount of discovery,  
13 including eight search warrants, many of which might implicate  
14 Mr. Ketabchi's expectation of privacy and Fourth Amendment  
15 rights and just a ton of other documents.

16 THE COURT: What are you asking for?

17 MR. BECKER: I'm asking for November 21, your Honor.

18 THE COURT: I can give you until November 9.

19 MR. BECKER: Okay. Very well.

20 THE COURT: The last date is November 9.

21 MR. BECKER: Thank you, your Honor. Your Honor --

22 THE COURT: Just a moment.

23 MR. BECKER: Yes.

24 THE COURT: Response November 16; reply, if any,  
25 November 21 for any motions that relate to Arash Ketabchi.

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1 Yes, sir. What else?

2 MR. BECKER: Yes, your Honor. The second matter  
3 concerns condition of bail that pertains both to Mr. Ketabchi  
4 and I suppose to all the defendants. And I noticed this on  
5 the -- I had an opportunity to review the docket entries today.  
6 On 4/28/17, when the Court set bail, it imposed as one of the  
7 conditions the condition that, quote, the defendants shall not  
8 communicate with each -- with other defendants except with  
9 their attorneys present.

10 I saw that, and it struck me, because, quite frankly,  
11 I don't think I've ever seen such a bail condition where  
12 defendants were not allowed to speak with one another. I have  
13 multiple --

14 THE COURT: They are, but their attorneys have to be  
15 present.

16 MR. BECKER: Yes, I mean absent -- I meant to say I've  
17 never seen a condition where the defendant's right to speak  
18 with his co-defendant was fettered in that manner. And if I  
19 could just give the Court a little background.

20 I've been in many cases, including currently,  
21 involving violent gang members, who are all incarcerated,  
22 either at the MDC or the MCC in multiple gang cases. There is  
23 no prohibition against them speaking with one another.

24 The right to confer with their fellow defendants, I  
25 respectfully submit, implicates their First Amendment right of

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1 association. It is one of the foundations of our society. It  
2 is the right of individuals to combine with other persons in  
3 pursuit of a common goal by lawful means. That's a Supreme  
4 Court decision in NAACP v. Claiborne Hardware Co.

5 The statute, your Honor, authorizes the Court to  
6 impose the least restrictive condition of bail that is  
7 necessary to reasonably assure the defendant's appearance and  
8 the safety of the community. So absent some particularized  
9 showing why the defendant's appearance and the safety of the  
10 community cannot be reasonably assured, absent the imposition  
11 of that condition, I would respectfully submit that it should  
12 not be a condition.

13 The defendant also has a due process right to speak  
14 with his fellow defendants in connection with the case, if they  
15 choose to. He's got more at stake in this case than anyone.  
16 His Sixth Amendment right --

17 THE COURT: Why does he have more at stake than  
18 anyone?

19 MR. BECKER: Pardon me?

20 THE COURT: Why does he have more at stake in this  
21 case than anyone?

22 MR. BECKER: Because his liberty is at stake, your  
23 Honor.

24 THE COURT: Is he the only one?

25 MR. BECKER: No, I didn't mean --

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1 THE COURT: He's not incarcerated.

2 MR. BECKER: I didn't mean more than his fellow --  
3 what I meant is that the interest that he has in this case is  
4 paramount. I misspoke when I said -- forgive me. That's all I  
5 meant.

6 THE COURT: I understand.

7 MR. BECKER: Your Honor, the Sixth Amendment provides  
8 him with the right to assistance of counsel. I'm there to  
9 assist him; he's not there to assist me. It seems to me that  
10 he has every right under the First Amendment, under due  
11 process, to speak with his co-defendants, absent some  
12 particularized showing why --

13 THE COURT: I take it he doesn't have a right to  
14 conspire with them to break the law, correct?

15 MR. BECKER: That is absolutely so, your Honor. If in  
16 speaking with his co-defendants he is found to have done that,  
17 then he is of course subject not only to revocation of bail,  
18 but he's subject of course to new charges.

19 But, when I think about all the cases I've been in  
20 over the years, some rather notorious, involving allegedly  
21 dangerous people, I've never seen such a condition. And I  
22 inquire whether or not this condition was imposed following due  
23 consideration by the Court and the opportunity for the parties  
24 to air out their positions. I'm not sure that it was.

25 THE COURT: It was not separately briefed, but there

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1 certainly was a discussion.

2 All right. Let me hear from the government.

3 Mr. Becker is telling me he's had many, many cases with very  
4 dangerous people, involving physical danger, although not  
5 financial danger apparently. And this is really a foundational  
6 issue here that does not let the man exercise a variety of his  
7 Constitutional rights.

8 What's the response of the government?

9 MS. FLETCHER: Your Honor, I would direct your Honor's  
10 attention to the provisions in the Bail Reform Act that lay out  
11 conditions that your Honor can set. In particular, 3142(c)(iv)  
12 and 3142(c)(v).

13 THE COURT: Just a moment.

14 MS. FLETCHER: Sure.

15 MR. FROCCARO: Judge, would it be okay if I leave?

16 THE COURT: Yes, of course you may leave.

17 Let's follow the trail. 3142(c)(1)(v).

18 MS. FLETCHER: Yes.

19 THE COURT: And you cited another provision.

20 MS. FLETCHER: The one just before it, (iv).

21 THE COURT: If the judicial officer determines that  
22 the release described in Subsection (b) of this section, which  
23 is entitled release on personal recognizance or unsecured  
24 appearance bond.

25 Is that the situation here, government?

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1 MS. FLETCHER: Your Honor, I'm sorry. I don't have a  
2 statute book with me. I was not aware this issue was going to  
3 be raised. I looked these provisions up on my phone before the  
4 proceeding started. My understanding is these are examples of  
5 conditions the Court can set.

6 THE COURT: Let me look. If the judicial officer  
7 determines that the release described in Subsection (b), which  
8 as I say is entitled release on personal recognizance or  
9 unsecured appearance bond, will not reasonably assure the  
10 appearance of the person as required or will endanger the  
11 safety of any other person or the community, such judicial  
12 officer shall order pretrial release of the person subject to  
13 the least restrictive further condition that such judicial  
14 officer determines will reasonably assure the appearance of the  
15 person as required and the safety of any other person and the  
16 community, which may include the condition that the person  
17 abide by specified restrictions on personal associations, place  
18 of abode or travel. And the other provision is avoid all  
19 contact with an alleged victim of the crime, and with a  
20 potential witness who may testify concerning the offense.

21 Mr. Becker, do you know if your client's released on  
22 an unsecured appearance bond?

23 MR. BECKER: My client is released on an appearance  
24 bond that is secured by property valued at \$100,000, is my  
25 understanding.

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1           THE COURT:   Somebody will have to follow this trail to  
2   see if there is a separate provision for those released on a  
3   secured appearance bond.   This is the only thing I've been  
4   directed to.   And I take it, government, your argument is the  
5   other defendants -- well, I won't make your argument.

6           What is your argument?

7           MS. FLETCHER:   Yes, your Honor.   So when this  
8   condition was raised to your Honor at the initial appearance, I  
9   had an opportunity to speak with all counsel for all defendants  
10   about this condition, including Mr. Froccaro.   And the reason  
11   there was no discussion about the reason for the condition is  
12   that all of the defendants consented to it, but I am happy to  
13   explain why, in the government's view, a prohibition on  
14   Mr. Ketabchi's ability to associate with his co-defendants is  
15   particularly appropriate and still satisfies the Bail Reform  
16   Act's requirement that the Court impose only the least  
17   restrictive conditions.

18           My request for this condition in particular was  
19   because in connection with the arrests of the six defendants on  
20   March 21 of this year, I learned from more than one person who  
21   was present when Mr. Ketabchi was in a room with his  
22   co-defendants that Mr. Ketabchi said, in no uncertain terms to  
23   his co-defendants --

24           THE COURT:   We're talking about this Mr. Ketabchi.

25           MS. FLETCHER:   This Mr. Ketabchi, not his brother,

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1 who, yes, is one of his co-defendants. This Mr. Ketabchi.  
2 That he said to his co-defendants, and I won't use the exact  
3 words that he used --

4 THE COURT: We're big people here, and we've read lots  
5 of tweets, so why don't you tell me in exact words.

6 MS. FLETCHER: I'm not sure I can say the F word in  
7 your Honor's presence. But my understanding is that  
8 Mr. Ketabchi directed his co-defendants to keep their F'ing  
9 mouths shut and get their lawyers.

10 THE COURT: And you're representing that others who  
11 were there have represented that's what he said.

12 MS. FLETCHER: Yes, both law enforcement witnesses who  
13 were present and at least one of his co-defendants. So it was  
14 that, that communication that initially prompted the government  
15 to seek this condition.

16 And the government's view is that if, as the  
17 government expects he was doing, Mr. Ketabchi is trying to tell  
18 his co-defendants, who are at least potential witnesses in the  
19 case against him and may actually be witnesses in the case  
20 against him, not to talk, that he's essentially obstructing and  
21 intimidating witnesses.

22 So, your Honor will recall that I was asking your  
23 Honor to make very clear instructions that they not speak with  
24 each other precisely because of this concern.

25 I have since learned of additional instances of



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1 communications between co-defendants in this case that, in the  
2 event your Honor is inclined to revise this bail condition, I'd  
3 ask for an opportunity to write to the Court about. But I can  
4 represent to your Honor that the restriction on the ability to  
5 communicate with co-defendants is primarily motivated by this  
6 Mr. Ketabchi's conduct.

7 THE COURT: Thank you. Sir.

8 MR. BECKER: Yes, your Honor. The conditions of bail  
9 that the government cited to your Honor, which are reflected in  
10 the statute, are certainly conditions that the Court in  
11 appropriate circumstances can impose. And those are  
12 circumstances where the Court makes a finding that, absent  
13 imposition of those conditions, the defendant's appearance in  
14 court and danger to the community cannot -- you know, that he  
15 will not present a danger to the community cannot reasonably be  
16 assured. That is the touchstone that guides the Court's  
17 consideration here, whether or not the condition is necessary  
18 and whether it is the least restrictive condition to reasonably  
19 assure his appearance and safety of the community.

20 I submit that what the government just cited to your  
21 Honor respectfully doesn't come within a mile of that, for the  
22 following reason. First of all, if I heard the government  
23 correctly, what Mr. Ketabchi said upon arrest to his  
24 co-defendants was keep your F'ing mouth shut and get a lawyer.  
25 I suggest that was good advice. I suggest that's advice I

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1 would have given.

2 The notion that someone is saying the best thing you  
3 can do is have a lawyer, the notion that that somehow is  
4 obstruction of justice or presents risk of flight or danger to  
5 the community, respectfully, I don't see a connection.

6 Your Honor talked about how we're all adults here and  
7 we've read tweets. Many of the tweets that we have read over  
8 the past few months are by our commander in chief who says the  
9 most outrageous things, and then the next day his spokespeople  
10 say, well, you can't take him literally.

11 If the Court or the government has concern that  
12 Mr. Ketabchi has said something that some skillful prosecutor  
13 might say could be touching on obstruction of justice, and I  
14 submit that comment doesn't come close, then he can be  
15 admonished and warned to not do anything like that. But his  
16 First Amendment right of association can only be taken away,  
17 your Honor, if there is a showing that it is necessary to  
18 reasonably assure his appearance and the safety of the  
19 community. And that has not even been attempted to be shown by  
20 the government.

21 THE COURT: Well, first of all, I don't think I was  
22 referring to any tweets by the commander in chief, as you say.  
23 What I really had in mind was the use of the F word from the  
24 erstwhile communications director of the White House in tweets,  
25 if I'm not mistaken.

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1 MR. BECKER: Yes, your Honor.

2 THE COURT: Putting that aside, this really has  
3 nothing do with the commander in chief. It has to do with what  
4 language is appropriate in a court or in public or what isn't.

5 It seems to me there are really two aspects to this  
6 issue. One has to do with bail. Your point there is a  
7 restriction on who he can talk to has nothing to do with  
8 ensuring the safety of the community or the appearance of the  
9 defendant in court. I haven't thought it through in quite  
10 those terms.

11 Something tells me safety of the community isn't only  
12 physical safety, that it may indeed relate to safety of the  
13 community for the sake of being free from alleged financial  
14 improprieties or not impropriety, but making victims of elderly  
15 people through telemarketing, which is what the allegations are  
16 here. So I think there is at least a possibility that it could  
17 come within the bail issue.

18 Secondly, the issue really is whether it is an  
19 appropriate restriction separate and apart from bail. That is,  
20 is it appropriate in this case to say you can't talk to your  
21 co-defendants because there is a concern of a continuing  
22 conspiracy, or even, to use the government's phrase, I won't  
23 say obstruction of justice, but putting pressure on  
24 co-defendants not to talk, with what may be an inherent threat  
25 if that's not followed, that direction to keep your F'ing mouth

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1 shut and get a lawyer is not followed.

2 Now, I certainly understand what you're saying is,  
3 boy, except for the F bomb, that's good advice. Don't talk to  
4 the government until you get a lawyer. That's your point.

5 (Continued on next page)

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Conference

1 THE COURT: As I say, I haven't thought it through.

2 If you wish to press this point, Mr. Becker, because I  
3 would view it as an application to alter bail conditions, if  
4 that is how you want to do it, that is perfectly fine with me.  
5 If you submit something to me in writing, the government will  
6 have an opportunity to respond so I can analyze it in the  
7 proper context. If you don't want to follow up, that is okay  
8 with me. It is entirely up to you.

9 MR. BECKER: Your Honor, I would like to just add that  
10 the court's concern regarding whether a financial crime can  
11 come within the rubric of the interests of the community is an  
12 interesting one, but respectfully, I don't think it is  
13 particularly pertinent here because the government has not  
14 alleged that the defendant said anything suggestive of  
15 continuing the conspiracy or said anything that should give the  
16 court concern that absent this restriction, the crimes will  
17 continue and those crimes would present a danger.

18 THE COURT: Well, there is a suggestion by the  
19 government it was inchoate, it was additional information that  
20 I take it the government was suggesting was appropriate only in  
21 an in-camera proceeding to be disclosed. I don't know what  
22 there is out there. The government was again suggesting that  
23 they had additional information along the lines of statements  
24 Mr. Ketabchi made.

25 MR. BECKER: Your Honor, if the government said

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Conference

1 ex-parte or in camera, I may have missed it.

2 THE COURT: No, they did not say that. That was an  
3 inference drawn by me.

4 MR. BECKER: You know, again what we have on the  
5 record as of this moment is nothing that would suggest a danger  
6 of continuing crimes which might then come under the rubric of  
7 danger to the community. We have nothing but someone telling  
8 his co-defendants be smart, get a lawyer, in colorful language.  
9 I open my comments by talking about defendants in violent cases  
10 who have never been subject to this restriction. I have been  
11 in many, many white collar financial crimes cases involving  
12 multiple defendants. Never once --

13 THE COURT: You said that several times.

14 MR. BECKER: I thought I said it only as to the  
15 violent. I am saying it also with respect to the financial  
16 crimes, that I haven't seen it.

17 THE COURT: What I gather from your statements, you  
18 view yourself as an experienced criminal defense lawyer, that  
19 is exactly why you're on the CJA panel, I appreciate that and  
20 you've never seen this before.

21 MR. BECKER: Yes, your Honor.

22 With respect to the court's invitation to submit  
23 something in writing, while I am never shy about submitting  
24 something in writing, I think that on the state of the record  
25 as we have it, I feel comfortable that the court does not

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Conference

1 respectfully have a basis to impose this condition.

2 If anything, I think the burden should be on the  
3 government as to why it should remain in place. Unless the  
4 court is prepared to make a finding that a defendant saying to  
5 his co-defendants, "you better F'ing shut up and get a lawyer"  
6 presents a risk of flight or danger to the community, which  
7 respectfully I think would be quite a stretch, then I think the  
8 record --

9 THE COURT: Fair enough. I understand. Let me hear  
10 from the government.

11 MS. FLETCHER: Your Honor, I think it is more  
12 appropriate Mr. Becker make a written submission. As you  
13 noted, this is a request for modification of bail, and in the  
14 event Mr. Becker does make a submission, the government would  
15 like an opportunity to respond. I think what is happening here  
16 is Mr. Becker is hoping your Honor will, pardon the term, be  
17 bullied into changing the condition now without having the  
18 opportunity to review the written submission that I promise  
19 your Honor I would like to submit.

20 THE COURT: I do not in the least feel bullied. This  
21 is a very interesting discussion.

22 MS. FLETCHER: I don't expect your Honor would feel  
23 bullied.

24 THE COURT: If anything, he is showing his bona fides  
25 as a CJA attorney.

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Conference

1 MS. FLETCHER: He is certainly the more experienced  
2 lawyer in this area of the courtroom.

3 THE COURT: Don't you be bullied by his saying he has  
4 seen many, many cases. I have seen many, many lawyers who said  
5 they have seen many, many cases who have not, but that is not  
6 Mr. Becker. Enough! Enough!

7 Mr. Becker, you can make whatever -- I do want it in  
8 writing. You can make it whatever length you want, but I am  
9 taking this as a request to alter bail conditions, do it under  
10 that rubric, and the government will respond.

11 MR. BECKER: I would be happy to do so, your Honor.

12 THE COURT: Thank you. I do appreciate this  
13 discussion, and nobody in my courtroom should ever feel  
14 bullied, and I guarantee you I never have.

15 MR. BECKER: Your Honor, I hope it goes without saying  
16 that the notion that I would consider acting in a way that  
17 might be construed as bullying is eons from who I am and  
18 certainly not what I am trying to accomplish here today.

19 THE COURT: Enough. I will see everyone at the next  
20 scheduled conference. Actually, I don't think there is a  
21 scheduled conference.

22 THE CLERK: It is an argument that is scheduled.

23 THE COURT: There is argument scheduled on the  
24 motions. Thank you, all.

25 (Court adjourned)